ENERGY RESERVES GROUP, INC.

IBLA 85-183 Decided June 23, 1986

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, affirming assessment of liquidated damages for incident of noncompliance.

Reversed.

1. Oil and Gas Leases: Civil Assessments and Penalties

A decision assessing liquidated damages pursuant to 43 CFR 3163.3(d) for an oil and gas lessee's failure to obtain approval before recompleting a well in a different interval will be reversed where the formation in which the well was recompleted has been determined by order of the state conservation commission to be part of a common pool embracing both the recompletion formation and the formation in which the well was initially completed.

APPEARANCES: William J. Fiant, Administrator, Field Services, Energy Reserves Group, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Energy Reserves Group, Inc., has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated November 26, 1984, affirming an assessment of $ 250 by the Assistant Area Manager, Farmington Resource Area, BLM. The assessment was levied pursuant to 43 CFR 3163.3(d) for failure to obtain prior approval for recompletion of a well in a different interval, as required by 43 CFR 3162.3-2(a). 1/

On October 19, 1984, appellant filed a sundry notice with BLM in which it reported the perforation of the Gallup formation at various depths on September 15, 1984, in well No. 13 (Jicarilla Tract 35), situated in the SE 1/4 SW 1/4 sec. 36, T. 25 N., R. 5 W., New Mexico Principal Meridian, Rio Arriba County, New Mexico, within the West Lindrith Gallup-Dakota field. By letter dated October 31, 1984, the Assistant Area Manager assessed appellant $ 250 because BLM had "no record of granting prior approval for the action indicated [in the sundry notice]."

1/ We note that 43 CFR 3162.3-2 was originally promulgated effective Nov. 26, 1982, as 30 CFR 221.27 (47 FR 47770 (Oct. 27, 1982)) and subsequently recodified.

On November 8, 1984, appellant requested a technical and procedural review of the October 1984 BLM assessment, pursuant to 43 CFR 3165.3. Appellant explained it had not obtained prior approval for the recompletion of well No. 13 because it had previously recompleted two other wells (Nos. 8 and 12) in the West Lindrith Gallup-Dakota field in the "same interval" after filing a notice of intent and it had been informed by the Farmington Resource Area Office that a notice of intent was "not necessary." Appellant stated:

> Your office, as well as ours, interpreted the regulation [43 CFR 3162.3-2] to state that a notice of intent was not necessary in the case of routine fracturing or acidizing, or recompletion in the same interval, but that a subsequent report of these operations was to be filed on form 3160-5.

Appellant argued that an assessment of $ 250 in such circumstances was unwarranted.

In its November 1984 decision, BLM affirmed the Assistant Area Manager's assessment because appellant had failed to obtain prior approval for the recompletion of well No. 13 in a different interval, as required by 43 CFR 3162.3-2(a). The decision acknowledged that the prior approvals obtained for recompletion of wells No. 8 and No. 12 "may have been superfluous as the recompletions involved the same interval," but distinguished well No. 13 as involving different intervals, thus requiring prior approval.

In support of this appeal, appellant asserts:

> The well is in the West Lindrith Gallup/Dakota pool which was established by the New Mexico Oil Conservation Division effective January 1, 1982. (Order No. R-6886). Prior to this date the field was defined as Otero Gallup and Basin Dakota by the NMOCD (as two separate pools). The [State's] decision to classify this area as one pool was influenced by the similar producing characteristics of the Gallup and Dakota formations. It is the State's decision that from the base of the Dakota to the top of the Gallup is considered one oil pool/field and does not require approval for down hole commingling.

Appellant's statement of reasons for appeal further discloses it filed a notice of intent to perforate the Gallup formation in well No. 8 on Jicarilla Tract 35 on October 11, 1983. A copy of the sundry notice appears in the record. Appellant notes well No. 8 was already producing from the Dakota formation, a fact supported by the copy of the well completion report dated November 12, 1984. Further, appellant asserts it filed a notice of intent to perforate the Gallup formation in well No. 12 on Jicarilla Tract 35 on December 12, 1983. A copy of this sundry notice also appears in the record. Again, appellant notes this well was already producing from the Dakota formation, a fact supported by the well completion report appearing in the record.

Appellant states the recompletion of wells No. 8 and No. 12 prompted a BLM official to insist that appellant file a request for approval of "down hole commingling" on the wells. In response, appellant advised BLM of State

Order No. R-6886 establishing the West Lindrith Gallup/Dakota pool -- a common pool influenced by the similar producing characteristics of the Gallup and Dakota formations. Appellant asserts it was thereupon informed by BLM that a notice of intent was not required for this type of recompletion, although a subsequent report of operations was required within 30 days of completion.

[1] The applicable regulation, 43 CFR 3162.3-2(a), provides in relevant part that: "A plan proposing further well operations shall be submitted by the lessee on Form 9-331 [Sundry Notices and Reports on Wells] for approval by the authorized officer prior to commencing operations to * * * recomplete in a different interval * * *." However, 43 CFR 3162.3-2(b) provides that: "Unless additional surface disturbance is involved and if the operations conform to the standard of prudent operating practice, prior approval is not required for * * * recompletion in the same interval." The question of whether appellant was required to obtain approval before recompleting well No. 13 in the Gallup formation thus turns on whether the Gallup and Dakota formations are properly considered part of the "same interval."

The regulation offers no definition of the term "interval" to assist in resolving this issue. "Interval" has been defined as "the vertical distance between strata," as well as the "distance between two points or depths in a borehole." Bureau of Mines, U.S. Department of the Interior, A Dictionary of Mining, Mineral, and Related Terms 586 (P. Thrush ed. 1968). The term "stratigraphic interval" has been defined as "the body of strata between two stratigraphic markers." American Geological Institute, Glossary of Geology (R. Bates and J. Jackson, eds., 2nd ed. 1980).

Appellant asserts the term interval should be interpreted in light of the State pooling order recognizing the Gallup and Dakota formations 2/ as constituting a common pool. A "pool" has been defined as "an underground accumulation of petroleum in a single and separate natural reservoir characterized by a single pressure system so that production of petroleum from one part of the pool affects the reservoir pressure throughout its extent." H. Williams and C. Meyers, Manual of Oil and Gas Terms 651 (6th ed. 1984). However, a pool may be defined to embrace more than a single reservoir. Thus, the term "pool may be construed to include a stratigraphic interval containing one or more reservoirs." State of Texas v. Secretary of the Interior, 580 F. Supp. 1197, 1213 (E.D. Tex. 1984). Similarly, a "zone" is defined as "a stratigraphic interval containing one or more reservoirs." H. Williams and C. Meyers, Manual of Oil and Gas Terms 984 (6th ed. 1984). In this regard, we note that the regulation at issue, when initially set forth as a proposed regulation, did not require prior authorization for

2/ A "formation" has been described as follows: "A succession of sedimentary beds that were deposited continuously and under the same general conditions. * * * An individual bed or group of beds distinct in character from the rest of the formation and persisting over a large area is called a 'member' of the formation." H. Williams and C. Meyers, Manual of Oil and Gas Terms 336 (6th ed. 1984).

subsequent well operations "provided such work does not change the production * * * zones open to the wellbore." 30 CFR 221.27, 46 FR 56569 (Nov. 17, 1982). 3/

Appellant has asserted that the State has designated the two producing formations, Gallup and Dakota, as a single pool in light of the similar producing characteristics. As noted above, a pool may be defined to include a stratigraphic interval containing one or more producing reservoirs. A zone is similarly defined. Although the term "interval" was substituted for the term "zone" in the transition from the proposed to the final regulation, there was no apparent intent to change the meaning or effect of the regulation. Thus, a good case can be made that the recompletion of well No. 13 in the Gallup formation was a recompletion in the "same interval," notwithstanding the fact the previous production was from the Dakota formation. 4/ This would tend to explain the alleged statement by a BLM official that no advance authorization was required for recompletion in the Gallup formation of a well previously completed in the Dakota formation. Although the term "interval" may be susceptible to a more narrow construction (e.g., limiting the scope to a single formation or member), we are not inclined to do so in the context of a civil damage assessment proceeding where the regulation has not defined the term with greater specificity. Under the circumstances of this case, we think it would be an error to define "interval" to include less than the producing formations constituting a common pool, as that term is defined in the Manual of Oil and Gas Terms, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

John H. Kelly
Administrative Judge

R. W. Mullen
Administrative Judge

3/ When the regulation was promulgated in final form, it was changed to its present language distinguishing recompletions in the same interval from those in different intervals. The preamble to the final regulations indicates the intent was to clarify when prior authorization is required, but does not disclose any intent to change the circumstances under which prior approval is needed. 47 FR 47763 (Oct. 27, 1982).

4/ Given the proper facts, two separate pools might exist in separate members of the same formation, giving rise to the proper conclusion that two separate intervals existed in the same formation.